

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

TX 2010-001001

09/22/2011

HONORABLE DEAN M. FINK

CLERK OF THE COURT  
S. Brown  
Deputy

FAIN FAMILY LIMITED PARTNERSHIP, et al. BART WILHOIT

v.

YAVAPAI COUNTY

MARTIN JAMES BRENNAN

MINUTE ENTRY

The Court has received and reviewed the Request for Rule 16 Pretrial Conference and Request to Continue on the Inactive Calendar in the Interim filed by Plaintiff. (Please note: It is this division's general practice to not set a conference date at this time, but rather to have the parties submit a joint pretrial memorandum and scheduling order for the Court's signature as set forth below.)

IT IS ORDERED as follows:

Continuing this matter on the inactive calendar until December 9, 2011.

Counsel/parties are to meet personally to discuss all of the matters set forth in Rule 16(b), A.R.Cv.P. Counsel/parties shall prepare and file with the Court, no later than **November 23, 2011**, a Joint Pretrial Memorandum, and a form of Order, for discovery, motion and disclosure deadlines.

If the parties agree to the dates, they should prepare a Stipulation and/or Order signed by all counsel in the form set forth below, containing the provisions which are applicable to their case. For example, paragraph 1 of the Order set forth below need not be included in the parties' proposed Order if the parties intend to disclose their experts' identity and opinions at the same time they disclose their experts' areas of testimony. Similarly, if the parties agree to

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simultaneously disclose the identity and opinions of their expert witnesses, they need not include in their proposed Order the language set forth in paragraph 2a. and b., below.

The proposed Order shall include specific dates (“December 5, 2009” is a specific date, “90 days prior to trial” is a date in reference to a trial date and is not a specific date). All applicable blanks should be filled in, except for the date of the Scheduling/Status Conference, as indicated. Do not incorporate a firm trial date in the proposed Order.

**If counsel/parties are unable to agree on any of the items that are to be included in the Order, the reasons for their inability to agree shall be set forth in their Pretrial Memorandum and each shall prepare a separate proposed Order.**

The Court will review the Joint Pretrial Memorandum and Scheduling Order. If all is in order, the Court will set a scheduling/status conference after the discovery cutoff date. At the scheduling/status conference, if the parties have completed discovery and are ready for trial, the Court will set firm dates for the final pretrial management conference and the trial. If the parties are not ready for trial, the matter will be placed on the Inactive Calendar for dismissal **within 60 days**.

If counsel/parties feel a pretrial conference is still necessary at this stage of the litigation, they should address the reasons why in the first paragraph of the Joint Pretrial Memorandum.

If a Joint Pretrial Conference Memorandum and Scheduling Order are not timely submitted, the Court will place the matter on the Inactive Calendar for dismissal.

**Counsel/parties shall provide prepaid return-addressed envelopes for the return mailing of the Scheduling Order and the appropriate number of copies of the Scheduling Order for all parties involved in this case, unless the parties are taking advantage of the e-filing program.**

The following is the general format to be used in the scheduling order:

**SCHEDULING ORDER LANGUAGE:**

The Court has received and reviewed the parties’ Joint Pretrial Memorandum and proposed Scheduling Order.

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In accordance therewith,

IT IS ORDERED as follows:

1. The parties shall mutually and simultaneously disclose areas of expert testimony by **5:00 p.m. on \_\_\_\_\_, 2010. [or]**
  - a. Plaintiffs shall disclose areas of expert testimony by **5:00 p.m. on \_\_\_\_\_, 2010.**
  - b. Defendants shall disclose areas of expert testimony by **5:00 p.m. on \_\_\_\_\_, 2010.**
2. The parties shall mutually and simultaneously disclose the identity and opinions of their expert witnesses by **5:00 p.m. on \_\_\_\_\_, 2010. [or]**
  - a. Plaintiffs shall disclose the identity and opinions of their expert witnesses by **5:00 p.m. on \_\_\_\_\_, 2010.**
  - b. Defendants shall disclose the identity and opinions of their expert witnesses by **5:00 p.m. on \_\_\_\_\_, 2010.**
3. Any and all discovery requests shall be served by **5:00 p.m. on \_\_\_\_\_, 2010.**
4. The parties shall disclose all non-expert witnesses and areas of testimony by **5:00 p.m. on \_\_\_\_\_, 2010.**
5. The parties shall mutually and simultaneously disclose their rebuttal expert witnesses and opinions by **5:00 p.m. on \_\_\_\_\_, 2010.**
6. All discovery shall be concluded by **5:00 p.m. on \_\_\_\_\_, 2010.**
7. The parties shall have exchanged up-to-date final Rule 26.1 Supplemental Disclosure Statements by **5:00 p.m. on \_\_\_\_\_, 2010.** This Order does not replace the parties' obligation to seasonably disclose on an on-going basis under Rule 26.1 as information becomes available.
8. Settlement conference (choose one):

a.

**PRIVATE MEDIATION**

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The parties shall participate in private mediation by **5:00 p.m. on \_\_\_\_\_, 2010;**

**All counsel/parties and their clients, or non-lawyer representatives who have full and complete authority to settle this case, shall personally appear and participate in good faith in this mediation, even if no settlement is expected. The mediator may permit a non-lawyer representative to appear telephonically if such appearance is requested and granted prior to the hearing.**

**OR**

**b. REFERRAL TO ADR FOR SETTLEMENT CONFERENCE**

**\*\*Referral will be issued by Clerk via separate minute entry.\*\***

The parties request a referral to the Court's Alternative Dispute Resolution Office (ADR) for the appointment of a judge *pro tempore* to conduct a settlement conference. The parties request that the judge *pro tempore* conduct a settlement conference not later than \_\_\_\_\_, **2010**. (**NOTE:** The ADR Office requires a minimum of 90 days to set a conference date.)

9. No expert witnesses, expert opinions, lay witnesses, or exhibits shall be used at trial other than those disclosed in a timely manner, except for good cause shown or written agreement of the parties.
10. All dispositive motions shall be filed by 5:00 p.m. on \_\_\_\_\_, **2010**.
11. A Telephonic Status/Scheduling Conference is set for the purpose of assigning a trial date on LEAVE DATE AND TIME BLANK (**time allotted: 15 minutes**). Counsel/parties shall have their trial calendars available for the conference.

**NOTE:** Counsel for the \_\_\_\_\_ is to initiate the telephonic conference by first arranging the presence of all other counsel or self-represented parties on the conference call and by calling this division (**602-506-3776**) at the scheduled time.

12. Should any discovery disputes arise, counsel/parties, prior to filing discovery motions, shall meet and confer pursuant to Rule 37, Ariz.R.Civ.P.

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13. The dates set forth in this Order are FIRM dates and will not be extended or modified by this Court absent good cause. Lack of preparation will not ordinarily be considered good cause.
14. **If the parties stipulate to extend any of these deadlines, the Court must be notified of said stipulation and must enter an order granting same. If no order is obtained, the foregoing orders shall not be altered, despite any agreement of the parties.**
15. Rule 38.1 of Ariz.R.Civ.P. is waived unless and until otherwise ordered by the Court.
16. Continuing this case on the inactive calendar until \_\_\_\_\_.

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Honorable Dean M. Fink  
Judge of the Superior Court**